CHAI CHIN FATT

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
GUNN CHIT TUAN J
[CRIMINAL APPEAL NO. 23 OF 1983]
12 MARCH 1984

CRIMINAL LAW AND PROCEDURE: *Powers of revision - Conviction based on a joint plea of guilty - Whether bad and irregular.*

The appellant and another accused were charged under ss. 392 and 397 of the Penal Code. On 21 March 1983 one of the accused, whose name was not recorded, appeared before the Magistrate - and pleaded guilty to the charge. The accused was found guilty and was convicted. The case was adjourned to 7 April 1983 for hearing of facts of the case and for sentence. But on 7 April 1983 it was recorded that "accused persons in person" were produced before the same Magistrate. Both accused persons were sent to imprisonment. However, it was not recorded on that day which of the two accused maintained his plea of guilty and that the other also wished to plead guilty to the charge against them. The appellant was convicted and sentenced to 3½ years imprisonment by the Magistrate. This is an appeal against sentence only.

Held:

[1] The charge should be explained to the two accused and the plea of each accused person should be taken and recorded separately after the consequences of the pleading guilty have been explained and acknowledged by each accused.

[2] The accused who had pleaded guilty on 21 March 1983 should have been asked by the Magistrate whether he maintained his plea of guilty on 7 April 1983, and it should also have been recorded that the other accused also pleaded guilty to the charge after it had been explained to him.

[3] In the circumstances of this case the Court should exercise its revisionary powers to order that the conviction and sentence of the appellant be set aside and a retrial before another Magistrate be ordered even though this is an appeal against sentence only.

Case referred to:
Fong Siew Poh & 3 Ors. v. Public Prosecutor [1939] 1 MC 155

Legislation referred to:
Penal Code, ss. 392, 397

For the appellant - Jagjit Singh; M/s. Jagjit Singh & Co.
For the respondent - Lee Ooi Kuan; DPP, AG'S Chambers

JUDGMENT

Gunn Chit Tuan J:

The appellant was convicted and sentenced to 3½ years' imprisonment by the Magistrate's Court, Petaling Jaya, Selangor, on a charge under ss. 392 and 397 of the Penal Code. He had filed an appeal against sentence only, but when Mr. Jagjit Singh argued the appeal before me on 12 March 1984, he drew my attention to p. 7 of the appeal records containing the

notes of evidence and asked me to exercise my powers of revision. He pointed out that according to the notes of evidence an accused person, whose name was not recorded, appeared before the Magistrate on 21 March 1983, and pleaded guilty to the charge. The learned Magistrate found him guilty, convicted him accordingly and adjourned the case to 7 April 1983, for the facts of the case and for sentence. But on 7 April 1983, it was recorded that "accused persons in person" were produced before the same Magistrate. There were pleas of mitigation by both the appellant and another person who was referred to as the first accused and both of them were sentenced to imprisonment. However, it was not recorded on that day which of the two accused maintained his plea of guilty and that the other also wished to plead guilty to the charge against them. Learned Counsel for the appellant referred to *Fong Siew Poh & 3 Ors. v. Public Prosecutor* [1939] 1 MC 155, in which case Gerahty J (as he then was) held that a conviction based on a joint plea of guilty is bad and irregular. The charge should be explained to the accused and the plea of each accused person taken and recorded separately after the consequences of the plea where it is one of guilt have been explained and acknowledged by each accused.

I agreed with Counsel that it was not clear from the notes of evidence whether it was the appellant or the other accused person who had pleaded guilty to the charge on 21 March 1983. In any case whoever it was who had pleaded guilty on 21 March 1983, should have been asked by the Magistrate whether he maintained his plea of guilty on 7 April 1983, and it should also have been recorded that the other accused also pleaded guilty to the charge after it had been explained to him. The learned Deputy did point out that the appellant had only appealed against sentence, but in the circumstances of this case I considered that the Court should exercise its revisionary powers and therefore ordered that the conviction and sentence of the appellant should be set aside and that he should be retried by another Magistrate.

Also found at [1984] 1 CLJ 361